

AMENDED IN ASSEMBLY MARCH 23, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 2678

Introduced by Assembly Member ~~Torrico~~ Fuentes
(Coauthor: Assembly Member Torrico)

February 19, 2010

An act to amend Section ~~2924g~~, of 2924g of, and to repeal and amend Section 2924 of, the Civil Code, relating to mortgages.

LEGISLATIVE COUNSEL'S DIGEST

AB 2678, as amended, ~~Torrico~~ Fuentes. Mortgages: Notice of sale.

Existing law requires that, upon a breach of the obligation of a mortgage or transfer of an interest in property, the trustee, mortgagee, or beneficiary record a notice of default in the office of the county recorder where the mortgaged or trust property is situated and mail the notice of default to the mortgagor or trustor. Existing law provides that, after not less than 3 months after the filing of the notice of default, the parties described above may give notice of sale, stating the time and place of the sale, as specified.

This bill would prohibit the mortgagee, trustee, beneficiary, or authorized agent from giving notice of sale if the mortgagee, trustee, beneficiary, or authorized agent is currently in negotiations to modify the existing loan. The bill also would repeal a duplicative provision.

Existing law requires that before any sale of property can be made under the power of sale contained in any deed of trust or mortgage, or any resale resulting from a rescission for a failure of consideration, notice of the sale must be given, published, and posted in a specified manner at least 20 days before the date of sale, as specified. Existing law also requires the mortgagee, trustee, or other person authorized to

record the notice of default or the notice of sale to send to each mortgagee or trustee a copy of the notice of sale at least 20 days before the date of sale. Existing law provides that there may be a postponement or postponements of the sale proceedings, under specified circumstances.

This bill would provide that if there is a postponement, or if there are postponements, of the sale proceedings, the borrower shall receive a new notification before the date of the actual sale.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2924 of the Civil Code, as added by
2 Section 8 of Chapter 4 of the Second Extraordinary Session of the
3 Statutes of 2009, is repealed.

4 2924. (a) ~~Every transfer of an interest in property, other than~~
5 ~~in trust, made only as a security for the performance of another~~
6 ~~act, is to be deemed a mortgage, except when in the case of~~
7 ~~personal property it is accompanied by actual change of possession,~~
8 ~~in which case it is to be deemed a pledge. Where, by a mortgage~~
9 ~~created after July 27, 1917, of any estate in real property, other~~
10 ~~than an estate at will or for years, less than two, or in any transfer~~
11 ~~in trust made after July 27, 1917, of a like estate to secure the~~
12 ~~performance of an obligation, a power of sale is conferred upon~~
13 ~~the mortgagee, trustee, or any other person, to be exercised after~~
14 ~~a breach of the obligation for which that mortgage or transfer is a~~
15 ~~security, the power shall not be exercised except where the~~
16 ~~mortgage or transfer is made pursuant to an order, judgment, or~~
17 ~~decree of a court of record, or to secure the payment of bonds or~~
18 ~~other evidences of indebtedness authorized or permitted to be~~
19 ~~issued by the Commissioner of Corporations, or is made by a public~~
20 ~~utility subject to the provisions of the Public Utilities Act, until~~
21 ~~all of the following apply:~~

22 (1) ~~The trustee, mortgagee, or beneficiary, or any of their~~
23 ~~authorized agents shall first file for record, in the office of the~~
24 ~~recorder of each county wherein the mortgaged or trust property~~
25 ~~or some part or parcel thereof is situated, a notice of default. That~~
26 ~~notice of default shall include all of the following:~~

27 (A) ~~A statement identifying the mortgage or deed of trust by~~
28 ~~stating the name or names of the trustor or trustors and giving the~~

1 ~~book and page, or instrument number, if applicable, where the~~
2 ~~mortgage or deed of trust is recorded or a description of the~~
3 ~~mortgaged or trust property.~~

4 ~~(B) A statement that a breach of the obligation for which the~~
5 ~~mortgage or transfer in trust is security has occurred.~~

6 ~~(C) A statement setting forth the nature of each breach actually~~
7 ~~known to the beneficiary and of his or her election to sell or cause~~
8 ~~to be sold the property to satisfy that obligation and any other~~
9 ~~obligation secured by the deed of trust or mortgage that is in~~
10 ~~default.~~

11 ~~(D) If the default is curable pursuant to Section 2924c, the~~
12 ~~statement specified in paragraph (1) of subdivision (b) of Section~~
13 ~~2924c.~~

14 ~~(2) Not less than three months shall elapse from the filing of~~
15 ~~the notice of default.~~

16 ~~(3) After the lapse of the three months described in paragraph~~
17 ~~(2), the mortgagee, trustee, or other person authorized to take the~~
18 ~~sale shall give notice of sale, stating the time and place thereof, in~~
19 ~~the manner and for a time not less than that set forth in Section~~
20 ~~2924f.~~

21 ~~(b) In performing acts required by this article, the trustee shall~~
22 ~~incur no liability for any good faith error resulting from reliance~~
23 ~~on information provided in good faith by the beneficiary regarding~~
24 ~~the nature and the amount of the default under the secured~~
25 ~~obligation, deed of trust, or mortgage. In performing the acts~~
26 ~~required by this article, a trustee shall not be subject to Title 1.6c~~
27 ~~(commencing with Section 1788) of Part 4.~~

28 ~~(e) A recital in the deed executed pursuant to the power of sale~~
29 ~~of compliance with all requirements of law regarding the mailing~~
30 ~~of copies of notices or the publication of a copy of the notice of~~
31 ~~default or the personal delivery of the copy of the notice of default~~
32 ~~or the posting of copies of the notice of sale or the publication of~~
33 ~~a copy thereof shall constitute prima facie evidence of compliance~~
34 ~~with these requirements and conclusive evidence thereof in favor~~
35 ~~of bona fide purchasers and encumbrancers for value and without~~
36 ~~notice.~~

37 ~~(d) All of the following shall constitute privileged~~
38 ~~communications pursuant to Section 47:~~

39 ~~(1) The mailing, publication, and delivery of notices as required~~
40 ~~by this section.~~

1 ~~(2) Performance of the procedures set forth in this article.~~

2 ~~(3) Performance of the functions and procedures set forth in~~
3 ~~this article if those functions and procedures are necessary to carry~~
4 ~~out the duties described in Sections 729.040, 729.050, and 729.080~~
5 ~~of the Code of Civil Procedure.~~

6 ~~(e) There is a rebuttable presumption that the beneficiary~~
7 ~~actually knew of all unpaid loan payments on the obligation owed~~
8 ~~to the beneficiary and secured by the deed of trust or mortgage~~
9 ~~subject to the notice of default. However, the failure to include an~~
10 ~~actually known default shall not invalidate the notice of sale and~~
11 ~~the beneficiary shall not be precluded from asserting a claim to~~
12 ~~this omitted default or defaults in a separate notice of default.~~

13 ~~(f) This section shall become operative on January 1, 2011.~~

14 *SEC. 2. Section 2924 of the Civil Code, as added by Section 8*
15 *of Chapter 5 of the Second Extraordinary Session of the Statutes*
16 *of 2009, is amended to read:*

17 2924. (a) Every transfer of an interest in property, other than
18 in trust, made only as a security for the performance of another
19 act, is to be deemed a mortgage, except when in the case of
20 personal property it is accompanied by actual change of possession,
21 in which case it is to be deemed a pledge. Where, by a mortgage
22 created after July 27, 1917, of any estate in real property, other
23 than an estate at will or for years, less than two, or in any transfer
24 in trust made after July 27, 1917, of a like estate to secure the
25 performance of an obligation, a power of sale is conferred upon
26 the mortgagee, trustee, or any other person, to be exercised after
27 a breach of the obligation for which that mortgage or transfer is a
28 security, the power shall not be exercised except where the
29 mortgage or transfer is made pursuant to an order, judgment, or
30 decree of a court of record, or to secure the payment of bonds or
31 other evidences of indebtedness authorized or permitted to be
32 issued by the Commissioner of Corporations, or is made by a public
33 utility subject to the provisions of the Public Utilities Act, until
34 all of the following apply:

35 (1) The trustee, mortgagee, or beneficiary, or any of their
36 authorized agents shall first file for record, in the office of the
37 recorder of each county wherein the mortgaged or trust property
38 or some part or parcel thereof is situated, a notice of default. That
39 notice of default shall include all of the following:

1 (A) A statement identifying the mortgage or deed of trust by
2 stating the name or names of the trustor or trustors and giving the
3 book and page, or instrument number, if applicable, where the
4 mortgage or deed of trust is recorded or a description of the
5 mortgaged or trust property.

6 (B) A statement that a breach of the obligation for which the
7 mortgage or transfer in trust is security has occurred.

8 (C) A statement setting forth the nature of each breach actually
9 known to the beneficiary and of his or her election to sell or cause
10 to be sold the property to satisfy that obligation and any other
11 obligation secured by the deed of trust or mortgage that is in
12 default.

13 (D) If the default is curable pursuant to Section 2924c, the
14 statement specified in paragraph (1) of subdivision (b) of Section
15 2924c.

16 (2) Not less than three months shall elapse from the filing of
17 the notice of default.

18 (3) After the lapse of the three months described in paragraph
19 (2), the mortgagee, trustee, or other person authorized to take the
20 sale shall give notice of sale, stating the time and place thereof, in
21 the manner and for a time not less than that set forth in Section
22 2924f. *The mortgagee, trustee, beneficiary, or authorized agent*
23 *shall not give notice of sale if the mortgagee, trustee, beneficiary,*
24 *or authorized agent is currently in negotiations to modify the*
25 *existing loan.*

26 (b) In performing acts required by this article, the trustee shall
27 incur no liability for any good faith error resulting from reliance
28 on information provided in good faith by the beneficiary regarding
29 the nature and the amount of the default under the secured
30 obligation, deed of trust, or mortgage. In performing the acts
31 required by this article, a trustee shall not be subject to Title 1.6c
32 (commencing with Section 1788) of Part 4.

33 (c) A recital in the deed executed pursuant to the power of sale
34 of compliance with all requirements of law regarding the mailing
35 of copies of notices or the publication of a copy of the notice of
36 default or the personal delivery of the copy of the notice of default
37 or the posting of copies of the notice of sale or the publication of
38 a copy thereof shall constitute prima facie evidence of compliance
39 with these requirements and conclusive evidence thereof in favor

1 of bona fide purchasers and encumbrancers for value and without
2 notice.

3 (d) All of the following shall constitute privileged
4 communications pursuant to Section 47:

5 (1) The mailing, publication, and delivery of notices as required
6 by this section.

7 (2) Performance of the procedures set forth in this article.

8 (3) Performance of the functions and procedures set forth in
9 this article if those functions and procedures are necessary to carry
10 out the duties described in Sections 729.040, 729.050, and 729.080
11 of the Code of Civil Procedure.

12 (e) There is a rebuttable presumption that the beneficiary
13 actually knew of all unpaid loan payments on the obligation owed
14 to the beneficiary and secured by the deed of trust or mortgage
15 subject to the notice of default. However, the failure to include an
16 actually known default shall not invalidate the notice of sale and
17 the beneficiary shall not be precluded from asserting a claim to
18 this omitted default or defaults in a separate notice of default.

19 (f) This section shall become operative on January 1, 2011.

20 **SECTION 1.**

21 *SEC. 3.* Section 2924g of the Civil Code is amended to read:

22 2924g. (a) All sales of property under the power of sale
23 contained in any deed of trust or mortgage shall be held in the
24 county where the property or some part thereof is situated, and
25 shall be made at auction, to the highest bidder, between the hours
26 of 9 a.m. and 5 p.m. on any business day, Monday through Friday.

27 The sale shall commence at the time and location specified in
28 the notice of sale. Any postponement shall be announced at the
29 time and location specified in the notice of sale for commencement
30 of the sale or pursuant to paragraph (1) of subdivision (c).

31 If the sale of more than one parcel of real property has been
32 scheduled for the same time and location by the same trustee, (1)
33 any postponement of any of the sales shall be announced at the
34 time published in the notice of sale, (2) the first sale shall
35 commence at the time published in the notice of sale or
36 immediately after the announcement of any postponement, and
37 (3) each subsequent sale shall take place as soon as possible after
38 the preceding sale has been completed.

39 (b) When the property consists of several known lots or parcels,
40 they shall be sold separately unless the deed of trust or mortgage

1 provides otherwise. When a portion of the property is claimed by
2 a third person, who requires it to be sold separately, the portion
3 subject to the claim may be thus sold. The trustor, if present at the
4 sale, may also, unless the deed of trust or mortgage otherwise
5 provides, direct the order in which property shall be sold, when
6 the property consists of several known lots or parcels which may
7 be sold to advantage separately, and the trustee shall follow that
8 direction. After sufficient property has been sold to satisfy the
9 indebtedness, no more can be sold.

10 If the property under power of sale is in two or more counties,
11 the public auction sale of all of the property under the power of
12 sale may take place in any one of the counties where the property
13 or a portion thereof is located.

14 (c) (1) There may be a postponement or postponements of the
15 sale proceedings, including a postponement upon instruction by
16 the beneficiary to the trustee that the sale proceedings be
17 postponed, at any time prior to the completion of the sale for any
18 period of time not to exceed a total of 365 days from the date set
19 forth in the notice of sale. The trustee shall postpone the sale in
20 accordance with any of the following:

- 21 (A) Upon the order of any court of competent jurisdiction.
22 (B) If stayed by operation of law.
23 (C) By mutual agreement, whether oral or in writing, of any
24 trustor and any beneficiary or any mortgagor and any mortgagee.
25 (D) At the discretion of the trustee.

26 (2) If there is a postponement, or if there are postponements, of
27 the sale proceedings, as described in paragraph (1), the borrower
28 shall receive a new notification, as provided in Section 2924b,
29 before the date of the actual sale.

30 (3) In the event that the sale proceedings are postponed for a
31 period or periods totaling more than 365 days, the scheduling of
32 any further sale proceedings shall be preceded by giving a new
33 notice of sale in the manner prescribed in Section 2924f. New fees
34 incurred for the new notice of sale shall not exceed the amounts
35 specified in Sections 2924c and 2924d, and shall not exceed
36 reasonable costs that are necessary to comply with this paragraph.

37 (d) The notice of each postponement and the reason therefor
38 shall be given by public declaration by the trustee at the time and
39 place last appointed for sale. A public declaration of postponement
40 shall also set forth the new date, time, and place of sale and the

1 place of sale shall be the same place as originally fixed by the
2 trustee for the sale. No other notice of postponement need be given.
3 However, the sale shall be conducted no sooner than on the seventh
4 day after the earlier of (1) dismissal of the action or (2) expiration
5 or termination of the injunction, restraining order, or stay that
6 required postponement of the sale, whether by entry of an order
7 by a court of competent jurisdiction, operation of law, or otherwise,
8 unless the injunction, restraining order, or subsequent order
9 expressly directs the conduct of the sale within that seven-day
10 period. For purposes of this subdivision, the seven-day period shall
11 not include the day on which the action is dismissed, or the day
12 on which the injunction, restraining order, or stay expires or is
13 terminated. If the sale had been scheduled to occur, but this
14 subdivision precludes its conduct during that seven-day period, a
15 new notice of postponement shall be given if the sale had been
16 scheduled to occur during that seven-day period. The trustee shall
17 maintain records of each postponement and the reason therefor.
18 (e) Notwithstanding the time periods established under
19 subdivision (d), if postponement of a sale is based on a stay
20 imposed by Title 11 of the United States Code (bankruptcy), the
21 sale shall be conducted no sooner than the expiration of the stay
22 imposed by that title and the seven-day provision of subdivision
23 (d) shall not apply.